

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 249 OF 2018

Yogesh Surendra Pagedar	...Applicant
Versus	
The State of Maharashtra and Ors.	...Respondents

Mr. Sanket G. Telang and Mr. Prathamesh A. Gokhale - Advocate for the Applicant
Mr. J. P. Yagnik - APP for the Respondent-State.

**CORAM : PRASANNA B. VARALE &
 S. M. MODAK, JJ.**

DATE : 05th APRIL, 2022

P. C. :-

. Heard Mr. Sanket Telang, the learned counsel for the Applicant and Mr. J. P. Yagnik, the learned APP for the Respondent-State.

2. None appears for the Respondent No. 2 in spite of issuance of notice to Respondent No. 2 and Respondent is being duly served on Respondent No. 2.

3. Vide Order dated 24/07/2018, this Court was pleased to observe its contention of the counsel for the Applicant that “dispute has been settled as the disputed amount has been paid to the first informant by the main accused Mr. Mahendra Shah, in whose favour the FIR has also been quashed”. The Division Bench then pleased to grant an interim relief by

way of directing to the “Investigating Agency not to file charge-sheet until further orders of this Court.”

4. The learned counsel appearing for the Applicant by inviting our attention to the copy of the FIR placed on record at page no. 14 submitted that even assuming the contents of the report on the face of it, the reference in the report of alleged mischief is against the main accused Mahendra Manilal Shah.

5. The counsel for the Applicant submitted that role attributed to the Applicant is present with the main accused on three occasions accompanying the main accused and one occasion of association with the complainant if invest the amount in the land dealing he would get good returns from the said dealing.

6. The learned counsel for the Applicant then submitted that the report concludes with positive statement only against the main accused Mahendra Manilal Shah. The counsel for the Applicant further submitted that in view of these facts the provisions of Indian Penal Code could not have been attracted against the Applicant.

7. The learned counsel for the Applicant then invited our attention to the first application seeking the police custody remand of the main accused Mahendra Shah. The counsel then submitted that even at that stage there was no involvement being shown of the applicant and all the

material in the application seeking custody remand was against the main accused Mahendra Shah.

8. The counsel for the Applicant then submitted that in the second application for remand a general statement is made against the Applicant and that to on the basis of statement of the main accused. Thus even this material against the Applicant cannot have any legal force is the submission of the learned counsel for the Applicant.

9. The counsel for the Applicant then invited our attention to the Order of this Court dated 06/02/2018 passed in Criminal Application No. 747 of 2016 preferred by the main accused Mahendra Shah. Copy of the placed on record at Exh. 'G' page 44. It would be useful for our purpose to refer the relevant observations of the Court which are as follows:

“3. The applicant as well as the complainant are present before the Court. The complainant states that the matter has been amicably settled between the parties and that the applicant has returned to him his amount of Rs. 2 crore along with compensation of Rs. 14 lakhs, hence, he has no objection to the quashing of said CR No. 214 of 2015 and the proceedings relating thereto qua the applicant. He has also filed the affidavit to that effect, which is taken on record and marked “X” for identification.

4. Looking to the fact that the matter has been

amicably settled between the parties and looking to the fact that the complainant does not wish to pursue the case against the present applicant – original accused, we are of the opinion that no purpose would be achieved by continuing the prosecution case against the present applicant in the said case. In this view of the matter, CR No. 214 of 2015 of Chaturshrungi Police Station, Pune and the proceedings relating thereto are quashed qua the applicant only. The case may proceed as far as the other accused are concerned.”

10. The counsel for the Applicant also invited our attention to the affidavit filed on behalf of the complainant in Criminal Application No. 747 of 2016. The complainant states in the affidavit that the Applicant i.e. the main accused Mahendra Shah refunded earnest money of Respondent No. 2 i.e. 2 crore and compensation amount of Rs. 14,00,000/- through Demand Draft which has already been realized and there is no grievance of complainant for quashing of the said crime registered against him.

11. The counsel for the Applicant then submitted that in view of this facts either registration of the First Information Report or the continuity of the proceedings against the Applicant would be an abuse of process of law. On going through the material placed on record as well as the material referred to in the earlier part, in our opinion, the counsel for the

Applicant is made out the case for allowing the Petition. It can be safely said the continuity of the proceedings against the Applicant would be nothing but futile exercise. Accordingly, the Petition is allowed in terms of prayer clause - 'a' and is disposed of accordingly.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)